

# HOUSE . . . . . No. 673

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By Ms. Gobi of Spencer, petition of Anne M. Gobi and others relative to the operation of snow or recreational vehicles while under the influence of alcohol or narcotic substances. The Judiciary.

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## The Commonwealth of Massachusetts

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### PETITION OF:

|                         |                    |
|-------------------------|--------------------|
| Anne M. Gobi            | Matthew C. Patrick |
| George N. Peterson, Jr. | Stephen M. Brewer  |
| Peter V. Kocot          | Patricia D. Jehlen |
| John W. Scibak          | Bruce E. Tarr      |
| Anthony J. Verga        | Mark J. Carron     |

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In the Year Two Thousand and Five.

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AN ACT RELATIVE TO THE OPERATION OF A SNOW VEHICLE OR RECREATIONAL VEHICLE UNDER THE INFLUENCE OF ALCOHOLIC OR NARCOTIC SUBSTANCES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1     SECTION 1. Chapter 90B of the General Laws is hereby  
2 amended by inserting after section 26 the following section:—  
3     Section 26A. (1) (a) (1) Whoever operates a snow or recre-  
4 ational vehicle on the lands, waters or ways, whether public or  
5 private, within the commonwealth while under the influence of  
6 intoxicating liquor, or of marijuana, narcotic drugs, depressants or  
7 stimulant substances, all as defined in section one of chapter  
8 ninety-four C, or the vapors of glue shall be punished by a fine of  
9 not less than \$500 nor more than \$5,000 or by imprisonment for  
10 not more than two and one-half years, or both such fine and  
11 imprisonment.  
12     There shall be an assessment of \$125 against a person who, by  
13 a court of the commonwealth, is convicted of, is placed on proba-  
14 tion for, or is granted a continuance without a finding for or other-

15 wise pleads guilty to or admits to a finding of sufficient facts of  
16 operating a snow or recreation vehicle while under the influence  
17 of intoxicating liquor, marijuana, narcotic drugs, depressants or  
18 stimulant substances pursuant to the provisions of this section;  
19 provided, however, that moneys collected pursuant to said assess-  
20 ment shall be deposited by the court with the treasurer into the  
21 Head Injury Treatment Services Trust Fund established by  
22 section 59 of chapter 10. In the discretion of the court, an assess-  
23 ment pursuant to this paragraph may be reduced or waived only  
24 upon a written finding of fact that such payment would cause the  
25 person against whom the assessment is imposed severe financial  
26 hardship. Such a finding shall be made independently of a finding  
27 of indigency for purposes of appointing counsel. If the person is  
28 sentenced to a correctional facility in the commonwealth and the  
29 assessment has not been paid, the court shall note the assessment  
30 on the mittimus.

31 If the defendant has been previously convicted or assigned to  
32 an alcohol or controlled substance education, treatment, or reha-  
33 bilitation program by a court of the commonwealth or any other  
34 jurisdiction because of a like violation within ten years preceding  
35 the date of the commission of the offense for which he has been  
36 convicted, the defendant shall be punished by a fine of not less  
37 than six hundred nor more than ten thousand dollars and by  
38 imprisonment for not less than sixty days nor more than two and  
39 one-half years; provided, however, that the sentence imposed  
40 upon such person shall not be reduced to less than thirty days, nor  
41 suspended, nor shall any such person be eligible for probation,  
42 parole, or furlough or receive any deduction from his sentence for  
43 good conduct until such person has served thirty days of such sen-  
44 tence, unless otherwise sentenced to an intermediate sanction as  
45 promulgated by the sentencing commission established in chapter  
46 four hundred and thirty-two of the acts of nineteen hundred and  
47 ninety-three; provided, further, that the commissioner of correc-  
48 tion may, on the recommendation of the warden, superintendent,  
49 or other person in charge of a correctional institution, or the  
50 administrator of a county correctional institution, grant to an  
51 offender committed under this subdivision a temporary release in  
52 the custody of an officer of such institution for the following pur-  
53 poses only: to attend the funeral of a relative; to visit a critically

54 ill relative; to obtain emergency medical or psychiatric services  
55 unavailable at said institution; to engage in employment pursuant  
56 to a work release program; or for the purposes of an aftercare pro-  
57 gram designed to support the recovery of an offender who has  
58 completed an alcohol or controlled substance education, treatment  
59 or rehabilitation program operated by the department of correc-  
60 tion; and provided, further, that the defendant may serve all or  
61 part of such thirty day sentence to the extent such resources are  
62 available in a correctional facility specifically designated by the  
63 department of correction for the incarceration and rehabilitation of  
64 drinking drivers.

65 If the defendant has been previously convicted or assigned to  
66 an alcohol or controlled substance education, treatment, or reha-  
67 bilitation program by a court of the commonwealth, or any other  
68 jurisdiction because of a like offense two times within ten years  
69 preceding the date of the commission of the offense for which he  
70 has been convicted, the defendant shall be punished by a fine of  
71 not less than one thousand nor more than fifteen thousand dollars  
72 and by imprisonment for not less than one hundred and eighty  
73 days nor more than two and one-half years or by a fine of not less  
74 than one thousand nor more than fifteen thousand dollars and by  
75 imprisonment in the state prison for not less than two and one-half  
76 years nor more than five years; provided, however, that the sen-  
77 tence imposed upon such person shall not be reduced to less than  
78 one hundred and fifty days, nor suspended, nor shall any such  
79 person be eligible for probation, parole, or furlough or receive any  
80 deduction from his sentence for good conduct until he shall have  
81 served one hundred and fifty days of such sentence, unless other-  
82 wise sentenced to an intermediate sanction as promulgated by the  
83 sentencing commission established in chapter four hundred and  
84 thirty-two of the acts of nineteen hundred and ninety-three; pro-  
85 vided, further, that the commissioner of correction may, on the  
86 recommendation of the warden, superintendent, or other person in  
87 charge of a correctional institution, or the administrator of a  
88 county correctional institution, grant to an offender committed  
89 under this subdivision a temporary release in the custody of an  
90 officer of such institution for the following purposes only: to  
91 attend the funeral of a relative, to visit a critically ill relative; to  
92 obtain emergency medical or psychiatric services unavailable at

93 said institution; to engage in employment pursuant to a work  
94 release program; or for the purposes of an aftercare program  
95 designed to support the recovery of an offender who has com-  
96 pleted an alcohol or controlled substance education, treatment or  
97 rehabilitation program operated by the department of correction;  
98 and provided, further, that the defendant may serve all or part of  
99 such one hundred and fifty days sentence to the extent such  
100 resources are available in a correctional facility specifically desig-  
101 nated by the department of correction for the incarceration and  
102 rehabilitation of drinking drivers.

103 If the defendant has been previously convicted or assigned to  
104 an alcohol or controlled substance education, treatment, or reha-  
105 bilitation program by a court of the commonwealth or any other  
106 jurisdiction because of a like offense three times within ten years  
107 preceding the date of the commission of the offense for which he  
108 has been convicted the defendant shall be punished by a fine of  
109 not less than one thousand five hundred nor more than twenty-five  
110 thousand dollars and by imprisonment for not less than two years  
111 nor more than two and one-half years, or by a fine of not less than  
112 one thousand five hundred nor more than twenty-five thousand  
113 dollars and by imprisonment in the state prison for not less than  
114 two and one-half years nor more than five years; provided, how-  
115 ever, that the sentence imposed upon such person shall not be  
116 reduced to less than twelve months, nor suspended, nor shall any  
117 such person be eligible for probation, parole, or furlough or  
118 receive any deduction from his sentence for good conduct until  
119 such person has served twelve months of such sentence, unless  
120 otherwise sentenced to an intermediate sanction as promulgated  
121 by the sentencing commission established in chapter four hundred  
122 and thirty-two of the acts of nineteen hundred and ninety-three;  
123 provided, further, that the commissioner of correction may, on the  
124 recommendation of the warden, superintendent, or other person in  
125 charge of a correctional institution, or the administrator of a  
126 county correctional institution, grant to an offender committed  
127 under this subdivision a temporary release in the custody of an  
128 officer of such institution for the following purposes only: to  
129 attend the funeral of a relative; to visit a critically ill relative; to  
130 obtain emergency medical or psychiatric services unavailable at  
131 said institution; to engage in employment pursuant to a work

132 release program; or for the purposes of an aftercare program  
133 designed to support the recovery of an offender who has com-  
134 pleted an alcohol or controlled substance education, treatment or  
135 rehabilitation program operated by the department of correction;  
136 and provided, further, that the defendant may serve all or part of  
137 such twelve months sentence to the extent that resources are avail-  
138 able in a correctional facility specifically designated by the  
139 department of correction for the incarceration and rehabilitation of  
140 drinking drivers.

141 If the defendant has been previously convicted or assigned to  
142 an alcohol or controlled substance education, treatment or rehabil-  
143 itation program by a court of the commonwealth or any other  
144 jurisdiction because of a like offense four or more times within  
145 ten years preceding the date of the commission of the offense for  
146 which he has been convicted, the defendant shall be punished by a  
147 fine of not less than two thousand nor more than fifty thousand  
148 dollars and by imprisonment for not less than two and one-half  
149 years or by a fine of not less than two thousand nor more than  
150 fifty thousand dollars and by imprisonment in the state prison for  
151 not less than two and one-half years nor more than five years; pro-  
152 vided, however, that the sentence imposed upon such person shall  
153 not be reduced to less than twenty-six months, nor suspended, nor  
154 shall any such person be eligible for probation, parole, or furlough  
155 or receive any deduction from his sentence for good conduct until  
156 he shall have served twenty-six months of such sentence, unless  
157 otherwise sentenced to an intermediate sanction as promulgated  
158 by the sentencing commission established in chapter four hundred  
159 and thirty-two of the acts of nineteen hundred and ninety-three;  
160 provided, further, that the commissioner of correction may, on the  
161 recommendation of the warden, superintendent, or other person in  
162 charge of a correctional institution, or the administrator of a  
163 county correctional institution, grant to an offender committed  
164 under this subdivision a temporary release in the custody of an  
165 officer of such institution for the following purposes only: to  
166 attend the funeral of a relative; to visit a critically ill relative; to  
167 obtain emergency medical or psychiatric services unavailable at  
168 said institution; to engage in employment pursuant to a work  
169 release program; or for the purposes of an aftercare program  
170 designed to support the recovery of an offender who has com-

171 pleted an alcohol or controlled substance education, treatment or  
172 rehabilitation program operated by the department of correction;  
173 and provided, further, that the defendant may serve all or part of  
174 such twenty-six months sentence to the extent that resources are  
175 available in a correctional facility specifically designated by the  
176 department of correction for the incarceration and rehabilitation of  
177 drinking drivers.

178 A prosecution commenced under the provisions of this subpara-  
179 graph shall not be placed on file or continued without a finding  
180 except for dispositions under section twenty-six D. No trial shall  
181 be commenced on a complaint alleging a violation of this subpara-  
182 graph, nor shall any plea be accepted on such complaint, nor shall  
183 the prosecution on such complaint be transferred to another divi-  
184 sion of the district court or to a jury-of-six session, until the court  
185 receives a report from the commissioner of probation pertaining to  
186 the defendant's record, if any, of prior convictions of such viola-  
187 tions or of assignment to an alcohol or controlled substance edu-  
188 cation, treatment, or rehabilitation program because of a like  
189 offense; provided, however, that the provisions of this paragraph  
190 shall not justify the postponement of any such trial or of the  
191 acceptance of any such plea for more than five working days after  
192 the date of the defendant's arraignment. The commissioner of pro-  
193 bation shall give priority to requests for such records.

194 At any time before the commencement of a trial or acceptance  
195 of a plea on a complaint alleging a violation of this subparagraph,  
196 the prosecutor may apply for the issuance of a new complaint pur-  
197 suant to section thirty-five A of chapter two hundred and eighteen  
198 alleging a violation of this subparagraph and one or more prior  
199 like violations. If such application is made, upon motion of the  
200 prosecutor, the court shall stay further proceedings on the original  
201 complaint pending the determination of the application for the  
202 new complaint. If a new complaint is issued, the court shall dis-  
203 miss the original complaint and order that further proceedings on  
204 the new complaint be postponed until the defendant has had suffi-  
205 cient time to prepare a defense.

206 If a defendant waives right to a jury trial pursuant to section  
207 twenty-six A of chapter two hundred and eighteen on a complaint  
208 under this subdivision he shall be deemed to have waived his right  
209 to a jury trial on all elements of said complaint.

210 (2) Except as provided in subparagraph (4) the provisions of  
211 section eighty-seven of chapter two hundred and seventy-six shall  
212 not apply to any person charged with a violation of subparagraph  
213 (1) and if said person has been convicted of or assigned to an  
214 alcohol or controlled substance education, treatment or rehabilita-  
215 tion program because of a like offense by a court of the common-  
216 wealth or any other jurisdiction within a period of ten years  
217 immediately preceding the commission of the offense with which  
218 he is charged.

219 (3) Notwithstanding the provisions of section six A of chapter  
220 two hundred and seventy-nine, the court may order that a defen-  
221 dant convicted of a violation of subparagraph (1) be imprisoned  
222 only on designated weekends, evenings or holidays; provided,  
223 however, that the provisions of this subparagraph shall apply only  
224 to a defendant who has not been convicted previously of such vio-  
225 lation or assigned to an alcohol or controlled substance education,  
226 treatment or rehabilitation program within ten years preceding the  
227 date of the commission of the offense for which he has been con-  
228 victed.

229 (4) Notwithstanding the provisions of subparagraphs (1) and  
230 (2), a judge, before imposing a sentence on a defendant who  
231 pleads guilty to or is found guilty of a violation of subparagraph  
232 (1) and who has not been convicted or assigned to an alcohol or  
233 controlled substance education, treatment or rehabilitation pro-  
234 gram by a court of the commonwealth or any other jurisdiction  
235 because of a like offense two or more times within ten years of the  
236 date of the commission of the offense for which he has been con-  
237 victed, shall receive a report from the probation department of a  
238 copy of the defendant's driving record, the criminal record of the  
239 defendant, if any, and such information as may be available as to  
240 the defendant's use of alcohol and may, upon a written finding  
241 that appropriate and adequate treatment is available to the defen-  
242 dant and the defendant would benefit from such treatment and that  
243 the safety of the public would not be endangered, with the defen-  
244 dant's consent place a defendant on probation for two years; pro-  
245 vided, however, that a condition for such probation shall be that  
246 the defendant be confined for no less than fourteen days in a resi-  
247 dential alcohol treatment program and to participate in an outpa-  
248 tient counseling program designed for such offenders as provided

249 or sanctioned by the division of alcoholism, pursuant to regula-  
250 tions to be promulgated by said division in consultation with the  
251 department of correction and with the approval of the secretary of  
252 health and human services or at any other facility so sanctioned or  
253 regulated as may be established by the commonwealth or any  
254 political subdivision thereof for the purpose of alcohol or drug  
255 treatment or rehabilitation, and comply with all conditions of said  
256 residential alcohol treatment program. Such condition of proba-  
257 tion shall specify a date before which such residential alcohol  
258 treatment program shall be attended and completed.

259 Failure of the defendant to comply with said conditions and any  
260 other terms of probation as imposed under this section shall be  
261 reported forthwith to the court and proceedings under the provi-  
262 sions of section three of chapter two hundred and seventy-nine  
263 shall be commenced. In such proceedings, such defendant shall be  
264 taken before the court and if the court finds that he has failed to  
265 attend or complete the residential alcohol treatment program  
266 before the date specified in the conditions of probation, the court  
267 shall forthwith specify a second date before which such defendant  
268 shall attend or complete such program, and unless such defendant  
269 shows extraordinary and compelling reasons for such failure, shall  
270 forthwith sentence him to imprisonment for not less than two  
271 days; provided, however, that such sentence shall not be reduced  
272 to less than two days, nor suspended, nor shall such person be eli-  
273 gible for furlough or receive any reduction from his sentence for  
274 good conduct until such person has served two days of such sen-  
275 tence; and provided, further, that the commissioner of correction  
276 may, on the recommendation of the warden, superintendent, or  
277 other person in charge of a correctional institution, or the adminis-  
278 trator of a county correctional institution, grant to an offender  
279 committed under this subdivision a temporary release in the cus-  
280 tody of an officer of such institution for the following purposes  
281 only: to attend the funeral of a relative; to visit a critically ill  
282 relative; to obtain emergency medical or psychiatric services  
283 unavailable at said institution; or to engage in employment pur-  
284 suant to a work release program. If such defendant fails to attend  
285 or complete the residential alcohol treatment program before the  
286 second date specified by the court, further proceedings pursuant to  
287 said section three of said chapter two hundred and seventy-nine



288 shall be commenced, and the court shall forthwith sentence the  
289 defendant to imprisonment for not less than thirty days as pro-  
290 vided in subparagraph (1) for such a defendant.

291 The defendant shall pay for the cost of the services provided by  
292 the residential alcohol treatment program; provided, however, that  
293 no person shall be excluded from said programs for inability to  
294 pay; and provided, further, that such person files with the court, an  
295 affidavit of indigency or inability to pay and that investigation by  
296 the probation officer confirms such indigency or establishes that  
297 payment of such fee would cause a grave and serious hardship to  
298 such individual or to the family of such individual, and that the  
299 court enters a written finding thereof. In lieu of waiver of the  
300 entire amount of said fee, the court may direct such individual to  
301 make partial or installment payments of the cost of said program.

302 (b) A conviction of a violation of subparagraph (1) of para-  
303 graph (a) shall revoke the license or right to operate of the person  
304 so convicted unless such person has not been convicted of or  
305 assigned to an alcohol or controlled substance education, treat-  
306 ment or rehabilitation program because of a like offense by a court  
307 of the commonwealth or any other jurisdiction within a period of  
308 ten years preceding the date of the commission of the offense for  
309 which he has been convicted, and said person qualifies for dispo-  
310 sition under section twenty-four D and has consented to probation  
311 as provided for in said section twenty-four D; provided, however,  
312 that no appeal, motion for new trial or exceptions shall operate to  
313 stay the revocation of the license or the right to operate. Such  
314 revoked license shall immediately be surrendered to the prose-  
315 cuting officer who shall forward the same to the registrar. The  
316 court shall report immediately any revocation, under this section,  
317 of a license or right to operate to the registrar and to the police  
318 department of the municipality in which the defendant is domi-  
319 ciled. Additionally, upon a conviction of a violation of subpara-  
320 graph (1) of paragraph (a), the director of environmental law  
321 enforcement may revoke or suspend the registration of the viola-  
322 tor's snow or recreation vehicle.

323 (c) (1) Where the license, right to operate, or registration of a  
324 snow or recreation vehicle has been revoked under section twenty-  
325 six D or twenty-six E, or revoked under paragraph (b) and such  
326 person has not been convicted of a like offense or has not been

327 assigned to an alcohol or controlled substance education, treat-  
328 ment or rehabilitation program because of a like offense by a court  
329 of the commonwealth or any other jurisdiction within a period of  
330 ten years preceding the date of the commission of the offense for  
331 which he has been convicted, the registrar shall not restore the  
332 license or reinstate the right to operate to such person unless the  
333 prosecution of such person has been terminated in favor of the  
334 defendant, until one year after the date of conviction; provided,  
335 however, that such person may, after the expiration of three  
336 months from the date of conviction, apply for and shall be granted  
337 a hearing before the registrar for the purpose of requesting the  
338 issuance of a new license for employment or educational pur-  
339 poses, which license shall be effective for not more than an iden-  
340 tical twelve hour period every day on the grounds of hardship and  
341 a showing by the person that the causes of the present and past  
342 violations have been dealt with or brought under control, and the  
343 registrar may, in his discretion, issue such license under such  
344 terms and conditions as he deems appropriate and necessary; and  
345 provided, further, that such person may, after the expiration of six  
346 months from the date of conviction, apply for and shall be granted  
347 a hearing before the registrar for the purpose of requesting the  
348 issuance of a new license on a limited basis on the grounds of  
349 hardship and a showing by the person that the causes of the pre-  
350 sent and past violations have been dealt with or brought under  
351 control and the registrar may, in his discretion, issue such a  
352 license under such terms and conditions as he deems appropriate  
353 and necessary.

354 (2) Where the license or the right to operate of a person has  
355 been revoked under paragraph (b) and such person has been previ-  
356 ously convicted of or assigned to an alcohol or controlled sub-  
357 stance education, treatment or rehabilitation program by a court of  
358 the commonwealth or any other jurisdiction because of a like vio-  
359 lation within a period of ten years preceding the date of the com-  
360 mission of the offense for which such person has been convicted,  
361 the registrar shall not restore the license or reinstate the right to  
362 operate of such person unless the prosecution of such person has  
363 been terminated in favor of the defendant, until two years after the  
364 date of the conviction; provided, however, that such person may,  
365 after the expiration of six months from the date of conviction,

366 apply for and shall be granted a hearing before the registrar for the  
367 purpose of requesting the issuance of a new license for employ-  
368 ment or education purposes, which license shall be effective for  
369 not more than an identical twelve hour period every day on the  
370 grounds of hardship and a showing by the person that the causes  
371 of the present and past violations have been dealt with or brought  
372 under control and that such person shall have successfully com-  
373 pleted the residential treatment program in subparagraph (4) of  
374 paragraph (a) of subdivision (1), or such treatment program man-  
375 dated by section twenty-six D, and the registrar may, in his discre-  
376 tion, issue such license under such terms and conditions as he  
377 deems appropriate and necessary; and provided, further, that such  
378 person may, after the expiration of one year from the date of con-  
379 viction, apply for and shall be granted a hearing before the regis-  
380 trar for the purpose of requesting the issuance of a new license on  
381 a limited basis on the grounds of hardship and a showing by the  
382 person that the causes of the present and past violations have been  
383 dealt with or brought under control and the registrar may, in his  
384 discretion, issue such a license under such terms and conditions as  
385 he deems appropriate and necessary.

386 (3) Where the license or right to operate of any person has been  
387 revoked under paragraph (b) and such person has been previously  
388 convicted or assigned to an alcohol or controlled substance educa-  
389 tion, treatment or rehabilitation program because of a like offense  
390 by a court of the commonwealth or any other jurisdiction two  
391 times within a period of ten years preceding the date of the com-  
392 mission of the crime for which he has been convicted or where the  
393 license or right to operate has been revoked pursuant to section  
394 twenty-three due to a violation of said section or due to a prior  
395 revocation under paragraph (b) or under section twenty-six D or  
396 twenty-six E, the registrar shall not restore the license or reinstate  
397 the right to operate to such person, unless the prosecution of such  
398 person has terminated in favor of the defendant, until eight years  
399 after the date of conviction; provided however, that such person  
400 may, after the expiration of two years from the date of the convic-  
401 tion, apply for and shall be granted a hearing before the registrar  
402 for the purpose of requesting the issuance of a new license for  
403 employment or education purposes, which license shall be effec-  
404 tive for not more than an identical twelve hour period every day,

405 on the grounds of hardship and a showing by the person that the  
406 causes of the present and past violations have been dealt with or  
407 brought under control and the registrar may, in his discretion,  
408 issue such license under such terms and conditions as he deems  
409 appropriate and necessary; and provided, further, that such person  
410 may, after the expiration of four years from the date of conviction,  
411 apply for and shall be granted a hearing before the registrar for the  
412 purpose of requesting the issuance of a new license on a limited  
413 basis on the grounds of hardship and a showing by the person that  
414 the causes of the present and past violations have been dealt with  
415 or brought under control and the registrar may, in his discretion,  
416 issue such a license under such terms and conditions as he deems  
417 appropriate and necessary.

418 (3½) Where the license or the right to operate of a person has  
419 been revoked under paragraph (b) and such person has been previ-  
420 ously convicted of or assigned to an alcohol or controlled sub-  
421 stance education, treatment or rehabilitation program by a court of  
422 the commonwealth or any other jurisdiction because of a like vio-  
423 lation three times within a period often years preceding the date of  
424 the commission of the offense for which such person has been  
425 convicted, the registrar shall not restore the license or reinstate the  
426 right to operate of such person unless the prosecution of such  
427 person has been terminated in favor of the defendant, until ten  
428 years after the date of the conviction; provided, however, that  
429 such person may, after the expiration of five years from the date  
430 of the conviction, apply for and shall be granted a hearing before  
431 the registrar for the purpose of requesting the issuance of a new  
432 license for employment or education purposes which license shall  
433 be effective for an identical twelve hour period every day on the  
434 grounds of hardship and a showing by the person that the causes  
435 of the present and past violations have been dealt with or brought  
436 under control and the registrar may, in his discretion, issue such  
437 license under such terms and conditions as he deems appropriate  
438 and necessary; and provided, further, that such person may, after  
439 the expiration of eight years from the date of conviction, apply for  
440 and shall be granted a hearing before the registrar for the purpose  
441 of requesting the issuance of a new license on a limited basis on  
442 the grounds of hardship and a showing by the person that the  
443 causes of the present and past violations have been dealt with or

444 brought under control and the registrar may, in his discretion,  
445 issue such a license under the terms and conditions as he deems  
446 appropriate and necessary.

447 (3<sup>3/4</sup>) Where the license or the right to operate of a person has  
448 been revoked under paragraph (b) and such person has been previ-  
449 ously convicted of or assigned to an alcohol or controlled sub-  
450 stance education, treatment or rehabilitation program by a court of  
451 the commonwealth or any other jurisdiction because of a like vio-  
452 lation four or more times within a period of ten years preceding  
453 the date of the commission of the offense for which such person  
454 has been convicted, such person's license or right to operate a  
455 snow or recreation vehicle shall be revoked for the life of such  
456 person, and such person shall not be granted a hearing before the  
457 registrar for the purpose of requesting the issuance of a new  
458 license on a limited basis on the grounds of hardship; provided,  
459 however, that such license shall be restored or such right to  
460 operate shall be reinstated if the prosecution of such person has  
461 been terminated in favor of such person. An aggrieved party may  
462 appeal, in accordance with the provisions of chapter thirty A, from  
463 any order of the registrar of snow or recreation vehicles under the  
464 provisions of this section.

465 (4) Notwithstanding the foregoing, no new license shall be  
466 issued or right to operate be reinstated by the registrar to any  
467 person convicted of a violation of subparagraph (1) of para-  
468 graph (a) until ten years after the date of conviction in case the  
469 registrar determines upon investigation and after hearing that the  
470 action of the person so convicted in committing such offense  
471 caused an accident resulting in the death of another, nor at any  
472 time after a subsequent conviction of such an offense, whenever  
473 committed, in case the registrar determines in the manner afore-  
474 said that the action of such person, in committing the offense of  
475 which he was so subsequently convicted, caused an accident  
476 resulting in the death of another.

477 (d) For the purposes of subdivision (1) of this section, a person  
478 shall be deemed to have been convicted if he pleaded guilty or  
479 nolo contendere or was found or adjudged guilty by a court of  
480 competent jurisdiction, whether or not he was placed on probation  
481 without sentence or under a suspended sentence or the case was  
482 placed on file, and a license may be revoked under paragraph (b)

483 hereof notwithstanding the pendency of a prosecution upon appeal  
484 or otherwise after such a conviction. Where there has been more  
485 than one conviction in the same prosecution, the date of the first  
486 conviction shall be deemed to be the date of conviction under  
487 paragraph (c) hereof.

488 (e) In any prosecution for a violation of paragraph (a), evidence  
489 of the percentage, by weight, of alcohol in the defendant's blood  
490 at the time of the alleged offense, as shown by chemical test or  
491 analysis of his blood or as indicated by a chemical test or analysis  
492 of his breath, shall be admissible and deemed relevant to the  
493 determination of the question of whether such defendant was at  
494 such time under the influence of intoxicating liquor; provided,  
495 however, that if such test or analysis was made by or at the direc-  
496 tion of a police officer, it was made with the consent of the defen-  
497 dant, the results thereof were made available to him upon his  
498 request and the defendant was afforded a reasonable opportunity,  
499 at his request and at his expense, to have another such test or  
500 analysis made by a person or physician selected by him; and pro-  
501 vided, further, that blood shall not be withdrawn from any party  
502 for the purpose of such test or analysis except by a physician, reg-  
503 istered nurse or certified medical technician. Evidence that the  
504 defendant failed or refused to consent to such test or analysis shall  
505 not be admissible against him in a civil or criminal proceeding,  
506 but shall be admissible in any action by the registrar under para-  
507 graph (f) or in any proceedings provided for in section twenty-six  
508 N. When there is no evidence presented at a civil or criminal pro-  
509 ceeding of the percentage, by weight, of alcohol in the defendant's  
510 blood, the presiding judge at a trial before a jury shall include in  
511 his instructions to the jury a statement of an arresting officer's  
512 responsibilities upon arrest of a person suspected to be operating a  
513 snow or recreation vehicle under the influence of alcohol and a  
514 statement that a blood alcohol test may only be administered with  
515 a person's consent; that a person has a legal right to take or not  
516 take such a test; that there may be a number of reasons why a  
517 person would or would not take such a test; that there may be a  
518 number of reasons why such test was not administered; that there  
519 shall be no speculation as to the reason for the absence of the test  
520 and no inference can be drawn from the fact that there was no evi-  
521 dence of a blood alcohol test; and that a finding of guilty or not

522 guilty must be based solely on the evidence that was presented in  
523 the case. If such evidence is that such percentage was five one-  
524 hundredths or less, there shall be a permissible inference that such  
525 defendant was not under the influence of intoxicating liquor, and  
526 he shall be released from custody forthwith, but the officer who  
527 placed him under arrest shall not be liable for false arrest if such  
528 police officer had reasonable grounds to believe that the person  
529 arrested had been operating a snow or recreation vehicle upon any  
530 such way or place while under the influence of intoxicating liquor;  
531 provided, however, that in an instance where a defendant is under  
532 the age of twenty-one and such evidence is that the percentage, by  
533 weight, of alcohol in the defendant's blood is two one-hundredths  
534 or greater, the officer who placed him under arrest shall, in accor-  
535 dance with subparagraph (2) of paragraph (f), suspend such defen-  
536 dant's license or permit and take all other actions directed therein,  
537 if such evidence is that such percentage was more than five one-  
538 hundredths but less than eight one-hundredths there shall be no  
539 permissible inference; and if such evidence is that such percentage  
540 was eight one-hundredths or more, there shall be a permissible  
541 inference that such defendant was under the influence of intoxi-  
542 cating liquor. A certificate, signed and sworn to, by a chemist of  
543 the department of the state police or by a chemist of a laboratory  
544 certified by the department of public health, which contains the  
545 results of an analysis made by such chemist of the percentage of  
546 alcohol in such blood shall be prima facie evidence of the per-  
547 centage of alcohol in such blood.

548 Whoever operates a snow or recreation vehicle on the lands,  
549 waters and or improved, unimproved, public or private ways  
550 within the Commonwealth shall be deemed to have consented to  
551 submit to a chemical test or analysis of his breath or blood in the  
552 event that he is arrested for operating while under the influence of  
553 intoxicating liquor; provided, however, that no person shall be  
554 deemed to have consented to a blood test unless such person has  
555 been brought for treatment to a medical facility licensed under the  
556 provisions of section fifty-one of chapter one hundred and eleven;  
557 and provided, further, that no person who is afflicted with hemo-  
558 philia, diabetes or any other condition requiring the use of antico-  
559 agulants shall be deemed to have consented to a withdrawal of  
560 blood. Such test shall be administered at the direction of a law

561 enforcement officer, having reasonable grounds to believe that the  
562 person arrested has been operating a vessel under the influence of  
563 intoxicating liquor.

564 (f) If a person arrested for operating a snow or recreation  
565 vehicle on the lands, waters and or improved, unimproved, public  
566 or private ways within the Commonwealth while under the influ-  
567 ence of intoxicating liquor refuses to submit to such test or  
568 analysis, after having been informed that his license, permit or  
569 right to operate motor vehicles shall be suspended and any certifi-  
570 cate or numbers may be revoked for a period of one hundred and  
571 twenty days for such refusal, no such test or analysis shall be  
572 made, but the officer before whom such refusal was made shall  
573 immediately prepare a written report of such refusal. Each such  
574 report shall be made on a form approved by the registrar, and shall  
575 be sworn to under the penalties of perjury by the officer before  
576 whom such refusal was made. Each such report shall set forth the  
577 grounds for the officer's belief that the person arrested had been  
578 operating a vessel while under the influence of intoxicating liquor,  
579 and shall state that such person had refused to submit to such  
580 chemical test or analysis when requested by such officer to do so  
581 such refusal having been witnessed by another person other than  
582 the defendant. Each such report shall identify which police officer  
583 requested said chemical test or analysis, and the other person wit-  
584 nessing said refusal. Each such report shall be sent forthwith to  
585 the registrar and to the director along with a copy of the notice of  
586 intent to suspend in any form, including electronic or otherwise,  
587 that the registrar deems appropriate.

588 Upon receipt of such report, the registrar shall suspend any  
589 license or permit to operate motor vehicles issued to such person  
590 under chapter ninety or the right of such person to operate motor  
591 vehicles in the commonwealth under section ten for a period of  
592 one hundred and twenty days, and the director may revoke any  
593 and all certificates of number of any snow or recreation vehicle of  
594 such person and may refuse to issue any certificate of number to  
595 such vessels for a period of one hundred and twenty days. Said  
596 report shall constitute prima facie evidence of the facts set forth  
597 therein at any administrative hearing regarding any suspension  
598 specified in this section.



599 (g) Any person whose license, permit or right to operate motor  
600 vehicles has been suspended or whose certificate of number has  
601 been revoked under this paragraph shall be entitled to a hearing  
602 before the registrar which shall be limited to the following issues:  
603 (i) did the officer have reasonable grounds to believe that such  
604 person had been operating a snow or recreation vehicle on the  
605 lands, waters and or improved, unimproved, public or private  
606 ways within the Commonwealth, (ii) was such person placed  
607 under arrest and (iii) did such person refuse to submit to such test  
608 or analysis. If, after such hearing, the registrar finds on any one of  
609 the said issues in the negative, the registrar shall reinstate such  
610 license, permit or right to operate motor vehicles of such person  
611 and shall notify the director of such reinstatement. Upon receipt of  
612 such notification, the director shall reinstate such certificate of  
613 number to the vessel of such person.

614 Notwithstanding any of the foregoing, any person whose cer-  
615 tificate of number has been revoked under this paragraph may at  
616 any time apply for and shall, within fifteen days, be granted a  
617 hearing before the director for the purpose of requesting the  
618 issuance of a certificate of number on the grounds of hardship and  
619 the director may, in his discretion, issue such certificate of number  
620 under such terms and conditions as he deems appropriate and nec-  
621 essary.

622 If a person fails to pay a civil administrative penalty assessed  
623 pursuant to this section within ninety days of the time it becomes  
624 final, such person shall be liable to the commonwealth for up to  
625 three times the amount of such penalty, together with the costs,  
626 plus interest from the time the civil administrative penalty became  
627 final, including all costs and attorney's fees incurred directly in  
628 the collection thereof. The rate of interest shall be the rate set  
629 forth in section six C of chapter two hundred and thirty-one. The  
630 director shall refuse to issue an original certificate of number or to  
631 renew the certificate of number for any snow or recreation vehicle  
632 owned by a person who fails to pay such civil administrative  
633 penalty and any related penalties or costs, until such payment is  
634 made in full.

635 (2) (a) Whoever, on the lands, waters and or improved, unim-  
636 proved, public or private ways within the Commonwealth, oper-  
637 ates a snow or recreation vehicle recklessly, or operates such a

638 vehicle negligently so that the lives or safety of the public might  
639 be endangered, or upon a bet or wager or in a race, or whoever  
640 operates a snow or recreation vehicle for the purpose of making a  
641 record and thereby violates any provision of section seventeen or  
642 any regulation under section eighteen, or whoever without stop-  
643 ping and making known his name, residence and the register  
644 number of his snow or recreation vehicle goes away after know-  
645 ingly colliding with or otherwise causing injury to any other  
646 vehicle or property, or whoever knowingly makes any false state-  
647 ment in an application for registration of a snow or recreation  
648 vehicle, shall be punished by a fine of not less than twenty dollars  
649 nor more than two hundred dollars or by imprisonment for not less  
650 than two weeks nor more than two years, or both; and whoever  
651 uses a snow or recreation vehicle without authority knowing that  
652 such use is unauthorized shall, for the first offense be punished by  
653 a fine of not less than fifty dollars nor more than five hundred dol-  
654 lars or by imprisonment for not less than thirty days nor more than  
655 two years, or both, and for a second offense by imprisonment in  
656 the state prison for not more than five years or in a house of cor-  
657 rection for not less than thirty days nor more than two and one-  
658 half years, or by a fine of not more than one thousand dollars, or  
659 by both such fine and imprisonment; and whoever is found guilty  
660 of a third or subsequent offense of such use without authority  
661 committed within five years of the earliest of his two most recent  
662 prior offenses shall be punished by a fine of not less than two hun-  
663 dred dollars nor more than one thousand dollars or by imprison-  
664 ment for not less than six months nor more than two and one-half  
665 years in a house of correction or for not less than two and one-half  
666 years nor more than five years in the state prison or by both fine  
667 and imprisonment.

668 A summons may be issued instead of a warrant for arrest upon  
669 a complaint for a violation of any provision of this paragraph if in  
670 the judgment of the court or justice receiving the complaint there  
671 is reason to believe that the defendant will appear upon a sum-  
672 mons.

673 There shall be an assessment of \$125 against a person who, by  
674 a court of the commonwealth, is convicted of, is placed on proba-  
675 tion for or is granted a continuance without a finding for or other-  
676 wise pleads guilty to or admits to a finding of sufficient facts of

677 operating a snow or recreation vehicle negligently so that the lives  
678 or safety of the public might be endangered pursuant to the provi-  
679 sions of this section; provided, however, that moneys collected  
680 pursuant to said assessment shall be deposited by the court with  
681 the treasurer into the Head Injury Treatment Services Trust Fund  
682 established by section 59 of chapter 10. At the discretion of the  
683 court, an assessment pursuant to this paragraph may be reduced or  
684 waived only upon a written finding of fact that such payment  
685 would cause the person against whom the assessment is imposed  
686 severe financial hardship. Such a finding shall be made indepen-  
687 dently of a finding of indigence for purposes of appointing  
688 counsel. If the person is sentenced to a correctional facility in the  
689 commonwealth and the assessment has not been paid, the court  
690 shall note the assessment on the mittimus.

691 (a½) (1) Whoever operates a snow or recreation vehicle on the  
692 lands, waters and or improved, unimproved, public or private  
693 ways within the Commonwealth, and without stopping and  
694 making known his name, residence and the registration number of  
695 his snow or recreation vehicle, goes away after knowingly col-  
696 liding with or otherwise causing injury to any person not resulting  
697 in the death of any person, shall be punished by imprisonment for  
698 not less than six months nor more than two years and by a fine of  
699 not less than five hundred dollars nor more than one thousand dol-  
700 lars.

701 (2) Whoever operates a snow or recreation vehicle on the lands,  
702 waters and or improved, unimproved, public or private ways  
703 within the Commonwealth and without stopping and making  
704 known his name, residence and the registration number of his  
705 snow or recreation vehicle, goes away to avoid prosecution or  
706 evade apprehension after knowingly colliding with or otherwise  
707 causing injury to any person shall, if the injuries result in the  
708 death of a person, be punished by imprisonment in the state prison  
709 for not less than two and one-half years nor more than ten years  
710 and by a fine of not less than one thousand dollars nor more than  
711 five thousand dollars or by imprisonment in a jail or house of cor-  
712 rection for not less than one year nor more than two and one-half  
713 years and by a fine of not less than one thousand dollars nor more  
714 than five thousand dollars. The sentence imposed upon such  
715 person shall not be reduced to less than one year, nor suspended,

716 nor shall any person convicted under this paragraph be eligible for  
717 probation, parole, or furlough or receive any deduction from his  
718 sentence until such person has served at least one year of such  
719 sentence; provided, however, that the commissioner of correction  
720 may on the recommendation of the warden, superintendent or  
721 other person in charge of a correctional institution, or the adminis-  
722 trator of a county correctional institution, grant to an offender  
723 committed under this paragraph, a temporary release in the cus-  
724 tody of an officer of such institution for the following purposes  
725 only: to attend the funeral of a relative; to visit a critically ill  
726 relative; to obtain emergency medical or psychiatric services  
727 unavailable at said institution or to engage in employment pur-  
728 suant to a work release program.

729 (3) Prosecutions commenced under subparagraph (1) or (2)  
730 shall not be continued without a finding nor placed on file.

731 (b) A conviction of a violation of paragraph (a) or paragraph  
732 (a½) of subdivision (2) of this section shall be reported forthwith  
733 by the court or magistrate to the registrar, who may in any event,  
734 and shall unless the court or magistrate recommends otherwise,  
735 revoke immediately the license or right to operate of the person so  
736 convicted, and no appeal, motion for new trial or exceptions shall  
737 operate to stay the revocation of the license or right to operate. If  
738 it appears by the records of the registrar that the person so con-  
739 victed is the owner of a snow or recreation vehicle or has exclu-  
740 sive control of any snow or recreation vehicle as a manufacturer  
741 or dealer or otherwise, the registrar may revoke the certificate of  
742 registration of any or all snow or recreation vehicles so owned or  
743 exclusively controlled.

744 (c) The registrar, after having revoked the license or right to  
745 operate of any person under paragraph (b), in his discretion may  
746 issue a new license or reinstate the right to operate to him, if the  
747 prosecution has terminated in favor of the defendant. In addition,  
748 the registrar may, after an investigation or upon hearing, issue a  
749 new license or reinstate the right to operate to a person convicted  
750 in any court for a violation of any provision of paragraph (a) or  
751 (a½) of subdivision (2); provided, however, that no new license or  
752 right to operate shall be issued by the registrar to: (i) any person  
753 convicted of a violation of subparagraph (1) of paragraph (a½)  
754 until one year after the date of revocation following his conviction

755 if for a first offense, or until two years after the date of revocation  
756 following any subsequent conviction; (ii) any person convicted of  
757 a violation of subparagraph (2) of paragraph (a<sup>1/2</sup>) until three years  
758 after the date of revocation following his conviction if for a first  
759 offense or until ten years after the date of revocation following  
760 any subsequent conviction; (iii) any person convicted, under para-  
761 graph (a) of using a snow or recreation vehicle knowing that such  
762 use is unauthorized, until one year after the date of revocation  
763 following his conviction if for a first offense or until three years  
764 after the date of revocation following any subsequent conviction;  
765 and (iv) any person convicted of any other provision of paragraph  
766 (a) until sixty days after the date of his original conviction if for a  
767 first offense or one year after the date of revocation following any  
768 subsequent conviction within a period of three years.

769 The registrar, after investigation, may at any time rescind the  
770 revocation of a license or right to operate revoked because of a  
771 conviction of operating a snow or recreation vehicle upon any  
772 way or in any place to which the public has a right of access or  
773 any place to which members of the public have access as invitees  
774 or licensees negligently so that the lives or safety of the public  
775 might be endangered. The provisions of this paragraph shall apply  
776 in the same manner to juveniles adjudicated under the provisions  
777 of section fifty-eight B of chapter one hundred and nineteen.

778 (3) The prosecution of any person for the violation of any pro-  
779 vision of this section, if a subsequent offense, shall not, unless the  
780 interests of justice require such disposition, be placed on file or  
781 otherwise disposed of except by trial, judgment and sentence  
782 according to the regular course of criminal proceedings; and such  
783 a prosecution shall be otherwise disposed of only on motion in  
784 writing stating specifically the reasons therefor and verified by  
785 affidavits if facts are relied upon. If the court or magistrate certi-  
786 fies in writing that he is satisfied that the reasons relied upon are  
787 sufficient and that the interests of justice require the allowance of  
788 the motion, the motion shall be allowed and the certificate shall be  
789 filed in the case. A copy of the motion and certificate shall be sent  
790 by the court or magistrate forthwith to the registrar.

791 (4) Any officer empowered to enforce this section may arrest  
792 without a warrant any person who the officer has probable cause  
793 to believe has violated or is violating any provision of this section  
794 or any rule or regulation made under authority hereof.

1     SECTION 2. In Paragraph 5 of said section 26, strike from the  
2 word “proof” in line 5 through the word “therewith” in line 7,  
3 replacing it with the following:— “trail pass membership to the  
4 Snowmobile Association of Massachusetts (S.A.M.) or other  
5 state-wide, recognized organization as determined by the snow  
6 mobile law administrator pursuant to the guidelines set for by the  
7 Director of the Division of Law Enforcement;”

1     SECTION 3. In said paragraph 5 of said section 26 strike from  
2 the word “or” in line 7 through the end of line 9.

1     SECTION 4. In said paragraph 5 of said section 26, insert after  
2 the word “on” in line 1 the following:— “public or”.